accurate. Upon receipt of the outbound manifest, the Customs officer also compares that document with the CF 7511 to verify the facts of exportation. Upon compliance with this procedure the Customs officer issues the CF 7511. Elimination of this process would save time for both the claimant and Customs.

The information required on a CF 7511 is the name of the exporting vessel or carrier, the number and kinds of packages and their marks and numbers, a description of the merchandise, the name of the exporter, and the country of ultimate destination. This information is also available from paperwork that is generated internally in the process of trade.

#### Comments

Before making a determination in this matter, Customs will consider any written comments timely submitted. Comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

#### Regulatory Flexibility Act

Based on the discussion above, and pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that the proposed amendments set forth in this document, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

### Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

#### Drafting Information

- The principal author of this document was Shery Rosenow, Entry Rulings Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

#### List of Subjects in 19 CFR Part 191

Claims, Customs duties and \inspection, Exports, Reporting and record keeping requirements.

#### Proposed Amendments

It is proposed to amend part 191 of the Customs Regulations (19 CFR part 191) as set forth below:

#### PART 191-DRAWBACK

1. The general authority citation for part 191 would continue to read as follows:

Authority: 5.U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1313, 1624.

2. It is proposed to amend § 191.51. Customs Regulations (19 CFR 191.51), by revising paragraph (a) to read as follows:

# § 191.51 Alternative procedures.

Exportation of articles for drawback purposes shall be established by complying with one of the following procedures:

(a) Documentary evidence, § 191.52;

3. It is proposed to revise the heading and text of § 191.52 to read as follows:

#### § 191.52 Documentary evidence.

A drawback claimant may support the drawback claim by documentary evidence of exportation, such as the bill of lading, air waybill, freight waybill, cargo manifest, or certified copies thereof, issued by the exporting carrier. The preceding documentary evidence shall be accompanied by an export invoice or packing list annotating the merchandise being exported with benefit of drawback.

#### Michael H. Lane,

Acting Commissioner of Customs.

Approved: September 8, 1992.

#### Nancy L. Worthington,

Acting Assistant Secretary of the Treasury.
[FR Doc. 92–24331 Filed 10–6–92; 8:45 am]
BILLING CODE 4820–02-M

# ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 51

[AD-FRL 3987-7

Approval and Promulgation of Implementation Plans; Appendix M, Addition of Method for Measurement of Opacity Emissions From Stationary Sources

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and notice of public hearing.

**SUMMARY:** In this notice, the EPA proposes to add test Method 203, for the

measurement of opacity from stationary sources, to appendix M [Example Test Methods for State implementation plans (SIP's)] in 40 CFR part 51. This action provides States with an instrumental test method which can be used in determining, on a continuous basis, compliance with stationary source opacity emission limitations.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the prepared rule.

the proposed rule.

DATES: Comments. Comments must be received on or before December 7, 1992.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by October 28, 1992 a public hearing will be held on November 6, 1992 beginning at 10 a.m. Persons interested in attending the hearing should call the contact mentioned under ADDRESSES to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by October 28, 1992.

ADDRESSES: Comments. Comments should be submitted (in duplicate if possible) to: Air Docket Section (LE–131), Attention: Docket Number A–91–08, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory Building, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should contact Anthony P. Wayne, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–3576.

Docket. Docket Number A-91-08, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:30 a.m. and noon, and 1:30 and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, room M1500, First Floor, Waterside Mall, Gallery 1, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

For information concerning the standard, contact Peter R. Westlin or Anthony P. Wayne at (919) 541–3576, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble to the proposed method.

- I. Background
- A. Introduction
- B. 1990 Promulgation of Methods 201 and 201A
- **II. Proposed Revisions**
- A. Summary of Proposed Revisions
- B. Rational for Proposal as an Example Method in part 51
- C. Existing Regulatory Requirements III. Administrative Requirements
- A. Public Hearing
- B. Docket
- C. Office of Management and Budget Reviews
- D. Regulatory Flexibility Act Compliance

#### I. Background

## A. Introduction

Section 110 of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 ("the Act") (42 U.S.C. 7410), specifies that States are to submit State Implementation Plans (SIPs) to EPA for approval that provide for the attainment and maintenance of ambient air quality standards. These standards will necessarily include emission limits and other control programs directed at sources of the pollutants involved. Many SIPs include regulations limiting pollutant emissions by limiting opacity (i.e., visible emissions).

Subpart K of 40 CFR part 51 requires that States include enforceable test methods in their SIPs for each emission limit (40 CFR 51.212(c)). Appendix M to 40 CFR part 51, which is entitled "Example Test Methods For State Implementation Plans," is designated as the repository for example test methods for SIPs. In order to assist States, local agencies and the public with guidance on how a widely accepted source test methodology can be applied to measure opacity, EPA, in this notice, is proposing to add a instrumental continuous opacity test method to Appendix M.

B. 1990 Promulgation of Methods 201 and 201A

On April 17, 1990 (55 FR 14246), EPA promulgated Methods 201 and 201A for the measurement of stack particulate matter. These methods were included in appendix M of 40 CFR part 51. Under the same action, EPA also revised subpart K to 40 CFR part 51, to direct States to the test methods in Appendix M, and to reiterate that SIPs must include enforceable test methods for each emission limit.

The example test methods in Appendix M are methods that are not specifically required by Federal

regulations, but are proposed and promulgated by EPA for use by the States. States may now incorporate appropriate appendix M test methods into their SIPs; or they may choose other methods (including methods in appendix A, part 60), which will be subjected to normal plan review process as stated at 40 CFR 50.212(c). The test method being proposed today is to be included as an example test method in appendix M.

#### II. Proposed Revisions

# A. Summary of Proposed Revisions

Today's action proposes to make Test Method 203 applicable for determining the opacity of emissions from stationary sources. Method 203 uses a continuous opacity monitoring system (COMS) that is based on technology involving the principle of transmissometry.

The way this technology works is that light having specific spectral characteristics is projected from a lamp through the effluent in the stack or duct, and the intensity of the projected light is measured by a sensor. The projected light is attenuated because of absorption and scatter by the particulate manner in the effluent; the percentage of light attenuated is defined as the opacity of the emission. Transparent stack emissions that do not attenuate light will have a transmittance of 100 percent or an opacity of zero percent. Opaque stack emissions that attenuate all of the light will have a transmittance of zero percent or an opacity of 100 percent.

Method 203 requires that the COMS comply with all of the installation, design, and other specifications of PS-1, 40 CFR part 60, appendix B, in order to use opacity monitoring data to determine compliance with opacity standards. In addition, Method 203 specifies quality assurance requirements and procedures that must be performed by the COMS operator after the initial demonstration of compliance with PS-1 requirements. The procedures indicate that data obtained during periods when the monitor is considered "out-ofcontrol" may not be used for compliance determinations. The statement is not to be viewed as a disincentive for a source owner or operator to perform required quality assurance and control activities called for in the Method 203 procedures. Failure to meet the requirements of these procedures should be considered a violation of the monitoring requirements called for. Though the procedures indicate caution on the use of the data during "out-of-control" periods, the use of data collected during these periods is left to the discretion of the appropriate regulatory agency.

The method identifies a valid data average for purpose of recognizing quality assurance activities which result in less than 100 percent data capture. A data average is valid if it contains 83 percent of the required measurement cycles. At a minimum, a cycle is 10 seconds in which a measurement is made. Opacity averages can be for example, a 1-minute average made up of six 10-second cycles. The 83 percent equates to 5 out of the required 6 cycles. In addition, a 95 percent valid data average capture requirement is also specified. Taken together, a minimum of 95 percent of the total opacity averaging periods available, determined by the sources operating time, must be obtained. Each averaging period must be comprised of 83 percent of the required 10-second cycles which make up the averaging period. The values are valid if the quality assurance criteria specified in this procedure are met.

# B. Rationale for Proposal as an Example Method in Part 51

As described above, appendix M is the designated repository for example test methods for use in SIPs.

The test methods in appendix M are available for States to reference in their SIPs without further EPA review of the method. The EPA has revised subpart K to emphasize that States must include enforceable test methods in their SIPs for each emission limit, and has directed States to appendix M for example test methods to be used in determining compliance (55 FR 14249, April 17, 1990). Today's proposed Method 203 is an example test method intended for use in SIPs, and, therefore, clearly should be included in appendix M. The inclusion of test methods with SIP standards will ensure that standards are set with full consideration, given to test method procedures and accuracy. The type of test method and the error associated with it can affect both the standard chosen audits stringency.

# C. Existing Regulatory Requirements

Test Method 203 is currently being informally provided as an example test method for use by State and local agencies in the development of their PM<sub>10</sub> SIPs pursuant to the Act, and to enhance existing total suspended particulate requirements. The EPA advises State and local agencies to review the applicability of this method to a particular source as they would any other compliance determination method. Note in so doing, that Test Method 203 is intended as an addition to existing visible emission test methods such as Test Method 9 of 40 CFR part 60, to be

used by regulatory agencies as a part of their overall program of applying compliance determination methodologies. Situations exist where Test Method 9 would need to continue as an applicable compliance method, e.g., where wet scrubbers are used for particulate control, however, Method 203 may replace Method 9 where a regulatory agency sees a benefit in its application. The regulatory agency continues to be responsible for the proper application and designation of compliance methods.

# III. Administrative Requirements

# A. Public Hearing

In accordance with section 307(d)(5) of the Act, a public hearing will be held, if requested, to discuss the proposed Test Method 203. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, DC (see ADDRESSES section of this preamble).

#### B. Docket

The docket is an organized and complete file for all information submitted or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) [section 307(d)(7)(A)].

#### C. Office of Management and Budget Review

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This rulemaking is not major because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-

based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have an economic impact on small entities because no additional cost will be incurred.

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

# List of Subjects in 40 CFR Part 51

Administrative practice and procedure, air pollution control, particulate matter.

The EPA proposes to amend title 40, chapter I, part 51 of the Code of Federal Regulations as follows:

# PART 51-[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401(b)(1), 7410, 7470–7479, 7501–7508, and 7601(a), unless otherwise noted.

#### Appendix M—[Amended]

2. Appendix M is amended by adding method 203 to read as follows:

# Method 203—Determination of the Opacity of Emissions From Stationary Sources by Continuous Opacity Monitoring Systems

#### 1. Applicability and Principle

1.1 Applicability. This method applies to the measurement of the opacity of emissions from stationary sources by continuous opacity monitoring systems (COMS), in order to determine compliance with an opacity emission standard. The method is not applicable where water droplets are present in the exhaust gas stream being measured.

1.2 Principle. The opacity of emissions from a stationary source is continuously measured and recorded using a COMS that meets all the requirements of Performance Specification 1 (PS-1) of 40 CFR part 60, appendix B. Minimum quality control (QC) and quality assurance (QA) requirements are specified to assess and assure the quality of COMS performance. Daily zero and span checks, quarterly performance audits, and annual zero alignment checks are required in order to assure the proper functioning of the COMS and the accuracy of the COMS data.

Because control and corrective action encompasses a variety of policies, specifications, standards, and corrective measures, this method treats QC requirements in general terms to allow the development of a QC system that is most effective and efficient for the circumstances.

#### 2. Definitions

- 2.1 Continuous Opacity Monitoring System (COMS). The total equipment required for the determination of the opacity of emissions which meets the minimum requirements of Performance Specification 1 of 40 CFR part 60.
- 2.2 Simulated Zero Check. Method or device used to provide a simulated zero opacity (or low-level value between zero and 20 percent of the applicable opacity standard).

2.3 Out-of-Control Periods.

- 2.3.1 Daily Assessments. Whenever the calibration drift (CD) exceeds twice the specification of PS-1, the COMS is out-of-control. The beginning of the out-of-control period is the time corresponding to the last successful drift check. The end of the out-of-control period is the time corresponding to the completion of appropriate adjustment and subsequent successful CD assessment.
- 2.3.2 Quarterly and Annual Assessment. Whenever a quarterly performance audit or annual zero alignment audit indicates unacceptable results, the COMS is "out-of-control." The beginning of the out-of-control period is the time corresponding to the completion of the performance audit indicating an unacceptable performance. The end of the out-of-control period is the time corresponding to the completion of appropriate corrective actions and subsequent successful audit (or. if applicable, partial audit).
- 2.4 Upscale Opacity Condition. Method or device used to provide a simulated upscale opacity (50 to 100 percent of the opacity standard).
- 2.5 External Zeroing Device (Zero-Jig). An external, removable device for simulating or checking the cross-stack zero alignment of the COMS.

#### 3. COMS Installations, Design, and Performance Specifications

In addition to the installation, design, and performance requirements of PS-1, the following are added:

- 3.1 External Calibration Filter Access. The COMS must be designed to allow for the evaluation of both linearity and accuracy relative to a simulated zero value and provide a check of all system components. The design must accommodate a calibration filter assembly and permit periodic use of external (i.e., not intrinsic to the instrument) neutral density filters.
- 3.2 Data Reduction/Recording. The COMS shall be designed to allow for the data reduction, recording, and reporting in accordance with the applicable opacity standards. Monitors that automatically adjust the data to the corrected calibration value must be capable of recording the amount of adjustment that is applied to the exhaust gas stream measurement. Data recorded during periods of COMS breakdowns, repairs, calibration checks, and adjustments shall not be used in the data averages of Section 3.4.
- 3.3 Zero and Upscale Calibration
  Evaluations. All COMS installed pursuant to

these procedures shall include a method for producing a simulated zero opacity condition and an upscale opacity condition using a certified neutral density filter to produce an known obscuration of light. Such procedures shall provide a system check of the analyzer internal optical surfaces and all active electronic circuitry including the lamp and photodetector assembly used in the measurement mode.

3.4 Data Averages. All COMS installed pursuant to these requirements shall complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each specified data average, e.g., 6-minute average. An arithmetic or integrated average of all data should be used.

#### 4. Opacity Measurement

4.1 The opacity of emissions shall be continuously measured and recorded in units of percent opacity, and shall be expressed in the averaging period specified in the applicable regulation.

4.2 The COMS shall be operated. paintained and calibrated in accordance with the instructions provided by the

instrument manufacturer.

4.3 Except for COMS breakdowns. repairs, calibration checks, zero and span checks, and other QA activities, the COMS shall be in continuous operation during all periods of source operation.

4.4 A data average shall be considered valid if no less than 83 percent of the required cycles of opacity readings upon which the data average is based are obtained.

4.5 Any and all valid data averages may be used to determine compliance with the applicable opacity standard. Data obtained during "out-of-control" periods may not be used for compliance determinations: however, it can be used for identifying periods of failure to meet quality assurance and control criteria.

#### 5. Quality Control (QC) Requirements

5.1 Calibration Drift (CD) Assessment. The COMS shall be checked, at least once daily and the CD quantified and recorded at zero (or low-level) and upscale-level opacity. The COMS shall be adjusted whenever the CD exceeds the specification of PS-1, and the COMS shall be declared "out-of-control" when the CD exceeds twice the specification of PS-1. Corrective actions, followed by a validating CD check are required when the COMS is out-of-control.

5.2 Fault Indicators Assessment. At least daily, the fault lamp indicators, data acquisition system error messages, and other system self diagnostic indicators shall be checked. The appropriate corrective actions should be taken when the COMS is operating outside preset limits. All COMS data recorded during periods in which fault indicators are illuminated shall be considered

invalid.

5.3 Performance Audits. Checks of the individual COMS components and factors affecting the accuracy of the monitoring data. as described below, shall be conducted on a quarterly basis. Examples of detailed audit procedures may be found in Reference 1, "Performance Audit Procedures for Opacity

Monitors," and Reference 2, "CEMS pilot Project: Evaluation of CEMS Reliability and QA Procedures Volume 1." The following identify the absolute minimum checks included in the performance audit:

5.3.1 Optical Alignment Assessment. The status of the optical alignment of the monitor components shall be checked and recorded according to the procedures specified by the monitor manufacturer. Realign as necessary.

5.3.2 Optical Surface Dust Accumulation Assessment. The apparent effluent opacity shall be compared and recorded before and after cleaning each of the exposed optical surfaces. The total optical surface dust accumulation shall be determined by summing the apparent reductions in opacity for all of the optical surfaces that are cleaned. Caution should be employed in performing this check since fluctuations in effluent opacity occurring during the cleaning cycle may adversely affect the results.

5.3.3 Zero and Upscale Response Assessment. The zero and upscale response errors shall be determined and recorded according to the CD procedures. The error is defined as the difference (in percent opacity) between the correct value and the observed value for the zero and high-level calibration

checks.

5.3.4 Zero Compensation Assessment. The value of the zero compensation applied at the time of the audit shall be calculated as equivalent opacity, corrected to stack exit conditions, according to the procedures specified by the manufacturer. The compensation applied to the effluent recorded by the monitor system shall be recorded.

5.3.5 Stack Exit Correlation Error Assessment. The optical pathlength correction ratio (OPLR) shall be computed from the monitor pathlength and stack exit diameter and shall be compared, and the difference recorded, to the monitor setup value. The stack exit correlation error shall be determined as the absolute value of the difference between the measured value and the correct value, expressed as a percentage of the correct value.

5.3.6 Calibration Error Assessment. A three-point calibration error test of the COMS shall be conducted. For either calibration error test methods identified below, three neutral density filters meeting the requirements of PS-1, shall be placed in the COMS light beam path five consecutive times, and the monitor responses shall be independently recorded from the COMS permanent data recorder. Additional guidance for conducting this test is included in section 7.0 of PS-1. The low-, mid-, and high-range calibration error results shall be computed as the mean difference and 95 percent confidence interval for the difference between the expected and actual responses of the monitor as corrected to stack exit conditions. These values shall be calculated using the procedures of Section 8.0 of PS-1.

5.3.6.1 Primary Calibration Error Method. The calibration error test requires the installation of an external calibration audit device (zero-jig). The zero-jig shall be adjusted to provide the same zero response as the monitors simulated zero.

5.3.6.2 Alternative Calibration Error Method. Conduct an incremental calibration

test by superimposing the neutral density filters over the effluent opacity and comparing the COMS responses to the expected value calculated from the filter and opacity values immediately preceding the superimposing. Record both the stack effluent opacity and the calibration filter value prior to each test. This method is sensitive to fluctuations in the effluent opacity during the

5.3.6.3 Attenuators. Use calibration attenuators (i.e., neutral density filters or screens) with values that have been determined according to section 7.1.3, "Attenuator Calibration" of PS-1, and produce simulated opacities (as corrected to stack exit conditions) in the ranges listed in Table 1 below. For visible emission standards of 10 percent (or less) opacity, attenuator selection may be based on a 10 percent opacity standard.

5.3.6.4 Attenuator Stability. The stability of the attenuator values shall be checked at least once per year according to the procedures specified in PS-1. The attenuators shall be recalibrated if the stability checks indicate a change of 2 percent opacity or

greater.

TABLE 1.—FILTER RANGES FOR COMS PERFORMANCE AUDITS

| Audit Point | Audit Filter Range (% Op)   |  |  |
|-------------|---|--|--|
| 1           | 20-60 Percent of the Emission Limit   |  |  |
| 2           | 80-120 Percent of the Emission  |  |  |
| 3           | 20-60 Percent of the Emission Limit<br>(low).<br>80-120 Percent of the Emission<br>Limit (mid).<br>150-200 Percent of the Emission<br>Limit (high). |  |  |

5.4 Zero Alignment Assessment. Compare the COMSs simulated zero to the actual clear path zero of the installation annually. The audit may be conducted in conjunction with, but prior to, a performance audit.

5.4.1 Primary Zero Alignment Method. The primary zero alignment shall be performed under clear path conditions. This may be accomplished if the process is not operating and the monitor pathlength is free of particulate matter or the monitor may be removed from its installation and set up under clear path conditions. The absence of particulate matter shall be demonstrated prior to conducting the test at the installed site. No adjustment to the monitor is allowed other than the establishment of the proper monitor pathlength and correct optical alignment of the COMS components. Record the COMS response to a clear condition and to the COMSs simulated zero condition as percent opacity corrected to stack exit conditions. For COMSs with automatic zero compensation, disconnect or disable the zero compensation mechanism or record the amount of correction applied to the COMSs simulated zero condition. The response difference in percent opacity to the clear path and simulated zero conditions shall be recorded as the zero alignment error. Adjust the COMSs simulated zero device to provide the same response as the clear path condition. Restore the COMS to its operating mode.

5.4.2 Alternative Zero Alignment Method. Monitors capable of allowing the installation of an external, removable zero-jig, may use the equipment for an alternative zero alignment, provided that the zero-jig setting has been established for the monitor pathlength and recorded for the specific COMS by comparison of the COMS responses to the installed zero-jig and to the clear path condition; the zero-jig is demonstrated to be capable of producing a consistent zero response when it is repeatedly (i.e., three consecutive installations and removals prior to conducting the final zero alignment check) installed on the COMS. The zero-jig setting shall be permanently set at the time of initial zeroing to the clear path zero value and protected when not in use to ensure that the setting equivalent to zero opacity does not change. The zero-jig setting shall be checked and recorded prior to initiating the zero alignment. Source owners and operators that employ a zero-jig shall perform a primary zero alignment audit once every 3 years.

5.5 Monitor Acceptance Criteria. 5.5.1 Performance Assessment. The following criteria are to be used for determining acceptable performance of and out-of-control periods for the COMS:

## TABLE 2.—PERFORMANCE AUDIT CRITERIA

| Stack Exit<br>Correlation Error.      | <2 percent.                                    |
|---------------------------------------|--|
| Fault Indicators                      | Inactive—no error messages.                    |
| Zero and Upscale<br>Responses.        | <2 percent opacity.                            |
| Zero Compensation                     | <4 percent opacity.                            |
| Optical Alignment                     | Misalignment error, <2 percent opacit          |
| Optical Surface Dust<br>Accumulation. | <4 percent opacity.                            |
| Calibration Error                     | <2 percent opacity.                            |
| Zero Alignment                        | <5 percent opacity for one check.              |
|                                       | <2 percent opacity<br>for three<br>consecutive |
|                                       | checks.  |
| Valid Data Average<br>Capture.        | >95 percent of source operating time.          |

5.5.2 Zero Alignment. The zero alignment is acceptable if the error at the simulated zero check is less than 2 percent opacity prior to adjustment. The simulated zero check shall be adjusted to provide the correct response each time the zero alignment check is performed.

5.5.3 Unacceptable Results-Single Performance Assessment. The COMS is outof-control whenever the results of a quarterly performance audit indicate noncompliance with any of the performance assessment criteria of TABLE 2 of § 5.5.1 above. If the COMS is out-of-control, take necessary corrective action to eliminate the problem. Following corrective action, the source pwper or operator must reconduct the appropriate failed portion of the audit and other

applicable portions to determine whether the COMS is operating properly and within specifications. The COMS owner or operator shall record both audit results showing the COMS to be out-of-control and the results following corrective action. COMS data obtained during any out-of-control period may not be used for compliance determination or to meet the data capture requirement of § 5.5.6, however the data can be used for identifying periods where there has been a failure to meet quality assurance and control criteria.

5.5.4 Unacceptable Results-Multiple Performance Assessments. Repeated audit failures (i.e., out-of-control conditions resulting from the quarterly audits) indicate that the QC procedures are inadequate or the COMS is incapable of providing quality data. The source owner or operator shall increase the frequency of the above QC procedures until the performance criteria is maintained or modify or replace the COMS whenever two consecutive quarters of unacceptable performance occurs.

5.5.5 Unacceptable Zero Alignment. If the error of the simulated zero check prior to adjustment exceeds 5 percent opacity for any zero check, or exceeds 5 percent opacity for any zero check, or exceeds the 2 percent opacity acceptance criterion for three consecutive checks, the performance of the COMS is unacceptable. The source owner or operator shall take corrective action to resolve the problem and improve the stability of the simulated zero check method or device or replace the COMS. If the COMS is not replaced, zero alignment audits must be conducted at least biannually during

nonconsecutive quarters.

5.5.6 Unacceptable Results-Insufficient Data Capture. Compliance with the 95 percent valid data capture requirement shall be determined by considering COMS downtime for all causes (e.g., monitor malfunctions, data system failures. preventive maintenance, unknown causes, etc.) except for downtime associated with routine zero and span checks and OA/OC activities required by this method. Failure of a COMS to obtain valid opacity data for at least 95 percent of the sources operating time during any reporting period (e.g., day, month, quarter, semiannual period, etc.) indicates that the QC/QA procedures are not sufficient or that the COMS is not capable of continuously providing quality data. Whenever less than 95 percent of the valid data averages are obtained for a reporting period, the source owner or operator shall either: (1) Perform such additional QC/QA activities as deemed necessary to assure acceptable data capture; or (2) modify or replace the COMS. Additional QC/QA procedures include, but are not limited to: Implementation or revision of a QC program. maintenance of a spare-parts inventory. conducting more frequent system performance audits.

#### 6. Culculations for COMS Assessments

6.1 Performance Audit Calculations. The calculations contained in Section 6 of PS-1 shall be followed.

6.2 Zero Alignment Checks. The procedures contained in Reference 1, Section 10, Zero Alignment Checks, shall be followed.

#### 7. Reporting Requirements

At the reporting frequency and in the format specified in the applicable regulation. report on a quarterly basis the performance and accuracy results from Section 5.0. The quarterly performance and accuracy report must contain the drift and audit result information as a Data Assessment Report (DAR), Figure 1. A copy of the quarterly DAR should be included as a separate report with the periodic reports of emissions required under applicable regulatory requirements. As a minimum, the DAR must contain the following information:

- 1. Source owner and operator name and address.
- 2. Identification (by serial number) and location of the monitors in the COMS.
- 3. Manufacturer and model of each monitor in the COMS.
- 4. Results of COMS performance and date of assessment as determined by performance audit or zero alignment audit, including performance audit results for each of the tests described in sections 5.3 and 5.4, the calculation of these results, as well as the zero error and its calculation. If the performance audit results show the COMS to be out-of-control, the COMS owner or operator must report both the audit results showing the COMS to be out-of-control and the results of the audit following corrective action showing the COMS to be operating within specification.
- 5. Summary of all corrective actions taken when COMS were determined to be out-ofcontrol, as described in Sections 5.5.

#### 8. Bibliography

8.1 "CEMS Pilot Project: Evaluation of CEMS Reliability and QA Procedures Volume 1," EPA-340/1-86-009a. May 1986. U.S. EPA, Office of Air Quality Planning and Standards. Washington, DC 20460.

8.2 "Performance Audit Procedures For Opacity Monitors," EPA-800/8-87-025. April 1987. U.S. EPA, Environmental Monitoring Systems Laboratory, Research Triangle Park, NC 27711.

8.3 Specification and Test Procedures for **Opacity Continuous Emission Monitoring** Systems in Stationary Sources, Performance Specification 1, 40 CFR part 60, appendix B.

8.4 Procedure 1. Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination, 40 CFR part 60, appendix F. Francis COMO Data A

| Example COMS Data Assessment report                |
|--|
| Period ending date:                                |
| Year:  |
| Company Name: ———————————————————————————————————— |
| Plant Name:  |
| Unit No.:  |
| COMS Manufacturer:                                 |
| Model:   |
| COMS Serial No.(s):                                |
| I. Performance Audit                               |

- 1. Stack Exit Correlation Error
- a. Actual pathlength correction factor
- b. Correct pathlength correction factor
- c. Stack exit Correlation Error
- 2. Active Fault Indicators; error messages present:

| 3. Zero | and Upscale | Calibration | Check |
|---------|-------------|-------------|-------|
| Resp    | onses       | ı           |       |

|            | Correct<br>value | Response | Difference |
|------------|------------------|----------|------------|
| Zero       |                  |          |            |
| Upscale    |                  |          |            |
| оросиолили |                  |          |            |

- 4. Zero Compensation Value (percent opacity):
- 5. Optical Alignment Status: \_\_\_\_\_\_
  6. Dust Accumulation on Optical Surfaces

|          | Initial opacity | Final opacity | Difference |
|----------|-----------------|---------------|------------|
| Window 1 |                 |               |            |
| Window 2 |                 |               |            |
| Total.   | •               |               |            |

| 7. | Calib | ration | Error |  |
|----|-------|--------|-------|--|
|    |       |        |       |  |

| a Filter Value | une fonuival | ent opacity) |
|----------------|--------------|--------------|
| a. riner van   | ues reduivai | ent opacity) |

| Low:  | _ |
|-------|---|
| Mid:  | _ |
| High: | _ |

b. Test Results

|   | Low | Mid | High    |
|---|-----|-----|---------|
| 1 |     |     |         |
| 2 | l   |     | ļ       |
| 3 |     |     |         |
| 5 |     |     |         |
|   |     |     | <b></b> |

| _    | ر   | ihan | tion | Error  |
|------|-----|------|------|--------|
| C. ! | Cai | ıora | uon  | r.rror |

| 1.0 11. |   |
|---------|---|
| Mid:    | _ |
| Llinh   |   |

8. Corrective Action for Unacceptable Performance Out-of-control periods:

Date(s) and Time(s): Number of hours:—

Corrective action taken:-

Results of audit (or partial audit) following corrective action.

(Use format, as applicable, as shown in I-8 above)

#### II. Zero Alignment Audit

- Clear Path Zero Response: \_\_\_\_\_

  percent opacity
- 2. Simulated Zero Response: \_\_\_\_\_\_
  percent opacity
- 3. Zero Alignment Error: \_\_\_\_\_ percent opacity
- 4. Zero Error of Previous Two(2)
  Assessments: \_\_\_\_\_

#### III. Calibration Drift Assessment

Out-of-control periods:

Date(s): — — — Number of days: — — —

Corrective action taken:
Results of CD after corrective action. (Use format above)

IV. Data Capture Assessment

1. Source operating hours:

2. Total hours of valid COMS data:

(During source operating hours, including valid data obtained during routine calibration checks and QA/QC

activities required by this method.)

3. Percent data capture: \_\_\_\_\_

V. Calculations (Include on a separate page.)
Figure 1. Example format for COMS data
Assessment Report.

[FR Doc. 92-24343 Filed 10-6-92; 8:45 am] BILLING CODE 6560-50-M

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OCC-20-P]

RIN 0938-AD79

Medicare Program; Appeal Rights and Procedures for Beneficiaries Enrolled in Prepaid Health Care Plans

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Proposed Rulemaking.

**SUMMARY:** This proposed rule would modify or establish administrative review procedures for Medicare beneficiaries who are enrolled in health maintenance organizations (HMOs), competitive medical plans (CMPs) and health care prepayment plans (HCPPs). Specifically, the proposed rule would (1) impose a 60-calendar-day time limit for an HMO and CMP to complete a reconsideration request by a Medicare enrollee for denied services or claims; (2) extend to HMO and CMP members the right to request immediate review by a Utilization and Quality Control Peer Review Organization (PRO) of an HMO or CMP or hospital determination that inpatient hospital stay is no longer necessary; and (3) require HCPPs to establish administrative review procedures for their Medicare enrollees who are dissatisfied with decisions on denied services or claims.

These proposed changes are necessary to improve efficiency in the administration of the Medicare program and to provide Medicare beneficiaries equitable administrative review rights, regardless of their enrollment status.

**DATES:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 7, 1992.

**ADDRESSES:** Mail written comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: OCC-20-P, P.O. Box 28676, Baltimore, Maryland 21207.

For comments that relate to information collection requirements, mail a copy of comments to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, Attention: Allison Herron Eydt, Washington, DC 20503.

If you prefer, you may deliver your written comments to one of the following locations:

Room 309-C, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OCC-20-P. Timely comments will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone (202) 245-7890).

FOR FURTHER INFORMATION, CONTACT: Jean LeMasurier, (202) 619–1063, for matters on PRO appeals. Jennifer Richmond, (202) 619–2755, for matters regarding reconsiderations and HCPP appeals.

# SUPPLEMENTARY INFORMATION:

#### I. General Background

Generally, payment for services provided to Medicare beneficiaries under title XVIII of the Social Security Act (the Act) may be made on a fee-forservice basis or on a prepayment basis. Under the fee-for-service system. payment is made after a service is furnished. Claims for payments are submitted by providers, physicians, suppliers, or beneficiaries to intermediaries and carriers who, under contract with HCFA, determine whether payment is appropriate. Under the prepayment method, eligible organizations, such as health maintenance organizations (HMOs) and competitive medical plans (CMPs), and health care prepayment plans (HCPPs), enter into contracts or agreements with HCFA to provide a range of services to Medicare beneficiaries who voluntarily enroll in these plans. This proposed rule deals with Medicare services provided to beneficiaries by entities paid on a prepayment basis. We refer to these entities collectively as "prepaid health care organizations."

Section 1876 of the Act provides the authority for HCFA to enter into contracts with eligible HMOs and CMPs